

**REMARKS.****Amendments to the Claims.**

5 The claims have been amended in the interests of speedy prosecution, and without prejudice to Applicant's right to prosecute the canceled claims and/or additional claims in one or more continuing applications.

Claims 1-10, 15, 19-20, and 24-25 are pending.

Claims 11-12 and 21-23 have been withdrawn from prosecution.

Claims 13-14 and 16-18 have been canceled.

10 Claims 1, 2, 3, 19, 20, and 24 have been amended to insert one of the important advantages of an embodiment of the disclosed atmosphere control members using a microporous film as set out in the specification. Claims 4-6, 8-10, 15, and 25 depend from claims 1, 2, 3, and 25 directly or indirectly. Claim 7 has been amended to insert a definitional characteristic of the microporous films disclosed in the specification.

15 Basis for the amended claims will be found in the specification as filed as follows. Claims 2, 3, 7, 19, 20, and 24:

Paragraph [0041] "The ACM can for example be selected so that the packaging atmosphere has a combined oxygen and carbon dioxide content of less than 18%, for example an oxygen content of 2-12% or 2-5% and a carbon dioxide content of 3-15% or 5-10%."

20 Paragraph [0042] "In the ACMs preferably used in the present invention, the microporous polymeric film, which serves as a support for the polymeric coating, comprises a network of interconnected pores such that gases can pass through the film. Preferably the pores have an average pore size of less than 0.24 micron."

25 Original claim 6 "A method according to claim 1 wherein the packaging has an oxygen content of 2-5% and a carbon dioxide content of 5-10%."

Paragraph [0013] "has a moisture vapor transmission rate (MVTR) of 50 to 250."

Example 2, calculated preferred MVTRs of 165 and 216.

**Priority**

Applicant understand the comments of the Examiner that due entirely to attorney error, the entry date was listed as the filing date of the national application, while the international filing date should have been listed. The substance of the oath, as pertains to the inventors, remains intact - in particular, that the application as amended was duly reviewed by the inventors and such is understood as their invention. As noted in MPEP 1893.03, this is a common attorney error and of no consequence to the oath according to the inventors' perspective. Nevertheless, the errors have been hand corrected for the record.

**The Rejections under 35 USC 112.**

Applicant acknowledges that claim 21 should have been listed as "Withdrawn" or "New, withdrawn". According to 37 CFR 1.121(c), claims 21-23 have all been simply listed as "Withdrawn". Applicant appreciates the acceptance of the previous alternate status identifiers.

**Obviousness Rejections**

Claims 1-7, 10, 19, 20, 24 and 25 were rejected as obvious over U.S. Patent Nos. 6,376,032 ("Clarke") and 6,190,710 ("Nir"). Claim 1 has been amended to specify that the HPC has an MVTR of 50 to 250. Not only is this range disclosed in the specification but there is a specific advantage in appearance of produce caused by balancing the transmission of water vapor with the level of desiccation of the fruit. Though Nir discloses use of blends, it discloses both blends to "give increased water vapor permeability" and to "have reduced water vapor permeability" relative to nylon-6 alone. The MVTR of nylon-6 (Capran) is known to be 267. Accordingly, one of ordinary skill in the art considering Clarke, would have no idea how to combine Nir with Clarke to result in the claimed preferred MVTR range. Moreover, claim 1 has been amended to specify that the non-HPC auxiliary component is "capable of providing an atmosphere that has a combined oxygen and carbon dioxide content of less than 18 percent" – this would rule out the teaching of Nir, which uses perforations for its atmosphere control

feature. As taught by the present application, perforations are not satisfactory for the storage of many materials because perforations are equally permeable to oxygen and carbon dioxide, the sum of the oxygen and carbon dioxide is such perforated packaging is about 21%. One of skill in the art would know this is not preferred for avacados (2-5% oxygen, 3-10% carbon dioxide), mangos (2-5% oxygen, 5-10% carbon dioxide) and bananas (2-5% oxygen, 2-5% carbon dioxide).

The Examiner respectfully is incorrect in stating on page 7 of the office action that Nir discloses an oxygen content of 4-5% oxygen and 5-10% carbon dioxide, in fact, Nir discloses sums of about 21% -- Example X and Example XIV for instance.

Claims 2-10, 15, 19 and 20 depend from claim 1 and are not obvious over the combination of Clarke and Nir for the same reasons. Regarding claims 8 and 9, the Suga reference does nothing to bridge the deficits from the combination of Clarke and Nir, all pending claims are likewise patentable and not obvious in view of Clark, Nir and Suga.

Similarly, claims 24 and 25 are distinguished as not being to perforated containers such as Nir and are not obvious as one skilled in the art would not modify Clarke by combining with Nir, a perforated container unable to achieve the goals of claims 24 and 25.

Claim 3 further specifies the HPC material is a polyester and the MVTR is 50 to 165, this is similarly not taught by Clark in view of Nir.

Accordingly, claims 1-7, 10, 19, 20, 24 and 25 as amended are patentable and far from obvious by the combination of Clarke and Nir.

## CONCLUSION

It is believed that this application is now in condition for allowance, and such action at an early date is requested. However, if there are any outstanding matters that could usefully be discussed by telephone, the Examiner is asked to call Tim Richardson or James McDonald at the numbers provided below.

Respectfully submitted

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